vested in others directly by the execution of the judgment for the offense, or which have been acquired by others whilst that judgment was in force." *Knote* v. *U. S.*, supra. Thus an office forfeited by conviction is not regained by pardon, *King* v. *Turvil* (1676) 2 Mod. 52; *Commonwealth* v. *Fugate* (Va. 1830) 2 Leigh 724, nor fines actually collected. *Knote* v. *U. S.*, supra. Also the pardon does not deprive one of his right to a reward for obtaining conviction, *Ex parte Garland*, supra, nor the criminal of his liability for costs to the prosecutor. *State* v. *Mooney* (1876) 74 N. C. 98.

An interesting point is raised by a recent case, *Holloway* v. *Holloway* (Ga. 1906) 55 S. E. 191, relative to the effect of pardon on conviction for crime as a ground of divorce. Under the rule that a pardon will not be allowed to affect vested rights, it has been held that it cannot invalidate a marriage legally contracted while the former husband was in prison, *In re Deming* (N. Y. 1813) 10 Johns. 232, and it seems equally true that it cannot annul a divorce already obtained, though not followed by remarriage. 1 Bishop, Marriage, Divorce, etc. §1807. Where the divorce is not sought until after the pardon is granted, it is not clear that, except in those jurisdictions where the marriage is dissolved *ipso facto* by the conviction, *Wisconsin* v. *Duket* (1895) 90 Wis. 272, any vested right is interfered with by allowing the pardon to destroy the ground of divorce. But in *Holloway* v. *Holloway*, supra, it was held that the ground was not destroyed and that the wife could sue even after her husband's pardon. The statute in that case made the cause for divorce conviction and sentence for more than two years. The husband at the time of pardon had been convicted and sentenced to more than two years, and, indeed, had served more than that period. Under the view, above noted, that a pardon does not properly relate back so as to affect the original fact of conviction, *Baum* v. *Clause*, supra, nor the past imprisonment and stigma consequent thereto, *In re Spencer*, supra, it may be argued that even though no vested right is interfered with, the pardon should not destroy the ground for divorce. Yet it is variously intimated that the underlying cause of this ground is not the ignominy of the conviction, *Foy* v. *Foy* (N. C. 1851) 13 Ired. 90, but the enforced and continued separation, *Davis* v. *Davis* (1897) 102 Ky. 440, which leaves small reason, once the enforced separation is over, for interfering with marital relations, where they have not been already ended by judicial decree. But where the distinctions concerning the effect of pardon upon past facts and conditions are so fine, the result reached in *Holloway* v. *Holloway*, supra, cannot be severely criticised.

The proposed draft of the uniform divorce law, while including conviction for crime among the grounds of divorce, makes no mention of the effect of pardon. 68 Alb. L. J. 298. In view of the strict construction which such grounds, unknown to the common law, *Hamaker* v. *Hamaker* (1856) 18 Ill. 317, may receive, it seems desirable that this point should not be left unsettled, especially since it is expressly provided, that a pardon shall be without effect, in a number of the statutes which the uniform law would supplant.

DANGEROUS USE OF HIGHWAYS.—The maintenance and use of highways involve a three cornered relationship of rights and duties. There

is placed upon the highway authorities the duty of keeping the roads in a reasonably safe condition for ordinary traffic; and upon travelers the duties of using it with due regard to the highway itself and to each other. The reasonableness of the use is a question of fact depending upon all the circumstances and expanding with the necessities of commerce and improvements in transportation, so that the measure of the reciprocal duties of highway authorities and users must be subject to constant change. *Indiana Springs Co.* v. *Brown* (1905) 165 Ind. 465; *Moses* v. *Railway Co.* (1859) 21 Ill. 515. A load of two tons was an indictable nuisance in 1642. *Egerly's Case*, 3 Salk. 183. In 1880 a load of six tons drawn by horses was reasonable, *Wallington* v. *Hoskins* (1880) L. R. 6 Q. B. 206, and a traction outfit weighing twenty-four tons did not exceed the statutory limit, though on the circumstances of the case the traffic was found to be "extraordinary" within the meaning of a statute requiring the user to compensate the authorities for extra cost of repair. *Aveland* v. *Lucas* (1879) L. R. 5 C. P. 211. But the principle of the early case has not changed and it is still cited as law. *McCarter* v. *Ludlum Steel Co.* (N. J. 1906) 63 Atl. 761. When the use is reasonable, there is no liability, except where the injury is the result of negligence, *Macomber* v. *Nichols* (1876) 34 Mich. 212, for injury to users of the highway or to the highway itself.

In the determination of extraordinary uses of land, the English law, with its jealous guardianship of established individual rights, has been more strict than our own. Any one who creates or maintains an unusual condition which may cause injury is liable for all harm resulting from such "dangerous thing" regardless of negligence and irrespective of whether the danger was sufficiently apparent to suggest itself to a reasonable man. *Rylands* v. *Fletcher* (1868) L. R. 3 H. L. 330. The application of this doctrine, in a recent English case, to the use of highways has led to an interesting result affecting the relationship between travelers and highway authorities. *Chichester Corporation* v. *Foster* (1906) 75 K. B. D. 33. The defendant's traction engine, weighing ten tons, injured a water main owned by the plaintiffs, the highway authorities. The engine was considerably heavier than those commonly used in the neighborhood, but no negligence was imputable to the defendant in its construction or use. The plaintiff's waterpipes were laid under the street thirty years before at a depth found still sufficient for ordinary traffic. Admitting the duty of the highway authorities to keep the road up to date, the court found them to be under no duty to provide for traffic such as the defendant's engine, and he was held liable for the damage caused. It is to be noted that the concurring opinion of Wills, J., denying the application of *Rylands* v. *Fletcher*, and that of Darling, J., apparently repudiating the doctrine of that case, set forth no other breach of duty by the defendant. They can be explained only upon the novel proposition that recovery is to be allowed in any case of injury where the plaintiff is not himself in fault. The leading opinion of Chief Justice ALVERSTONE, accepting the lower court's theory, makes it apparent that *Rylands* v. *Fletcher* is the true ground of the decision. Under such authority it can scarcely be criticised, though it tends to make the duty of the highway authorities lag far behind the actual use.

The doctrine of *Rylands* v. *Fletcher* has been generally disapproved in this country, Burdick, Torts, 447, the American courts inclining to a liberal attitude where modern improvements in transportation are concerned. All vehicles which appear to be reasonably adapted to road use have *prima facie* equal rights in the use of public ways, regardless of their form or means of locomotion; *Macomber* v. *Nichols*, supra; *Holland* v. *Bartch* (1889) 120 Ind. 46; *Rice* v. *Buffalo &c. Co.* (N. Y. 1897) 17 App. Div. 462; liability in such cases must rest upon negligence. *Mullen* v. *Glens Falls* (N. Y. 1886) 11 App. Div. 275; *Miller* v. *Addison* (1903) 96 Ind. 731. So ordinances prohibiting the use of any class of vehicles have been held void, *Bogue* v. *Bennett* (1901) 156 Ind. 478, and it is generally recognized that roads and bridges must be kept sufficient for use by traction engines where such use is common. *Coulter* v. *Township* (1894) 164 Pa. 543; *Johnson* v. *Highland* (1905) 124 Wis. 597. It has even been held that a heavy engine, though improperly used in starting and in turning corners, to the serious injury of the roads, may be so operated provided the damage caused in such places is not greater than the wear and tear on the whole road that would be incident to moving the same weight by wagons. *McCarter* v. *Ludlum Steel Co.* (N. J. 1906) 63 Atl. 761. While it is believed that this case goes too far, 6 COLUMBIA LAW REVIEW 595, it seems clear that it is more representative of the American attitude than is *Chichester Corporation* v. *Foster*, supra. In making the measure of liability in such cases the use of care commensurate with the risk, and holding an injury resulting in spite of due care, as in the case last mentioned, damnum absque injuria, the courts of this country have shown a tendency to favor improved highway facilities which is highly desirable.

JOINDER OF PARTIES IN ACTIONS TO ENJOIN POLLUTION OF STREAMS. —Beside the absolute right of every riparian owner to the natural flowage of the stream, *Dickinson* v. *Canal Co.* (1852) 7 Exch. 282; *Tourtellot* v. *Phelps* (1855) 4 Gray 370, and to the ordinary use of the water for natural and domestic purposes, *Wilts* v. *Waterworks Co.* (1874) L. R. 9 Ch. App. 451, 457; *Union Co.* v. *Ferris* (1872) 2 Sawy. 176, 191, there are recognized other rights of use for manufacturing and other non-domestic purposes, *Elliot* v. *Railroad Co.* (1852) 10 Cush. 191, inferior to the right of ordinary use, *Crandall* v. *Woods* (1857) 8 Cal. 136, 141, and to be confined within reasonable limits, with due regard to similar rights of other proprietors. *Prentice* v. *Geiger* (1878) 74 N. Y. 341. An unreasonable use, resulting in appreciable injury, may be made the subject of an action for damages, *Prentice* v. *Geiger*, supra; or, if the injury is irreparable, it may be enjoined. *Wright* v. *Moore* (1863) 38 Ala. 593, 599. Since the riparian owner's right is to the ordinary flowage, not only in volume, but in purity, *Snow* v. *Parsons* (1856) 28 Vt. 459, 461, any use of the stream which defiles it to an appreciable degree is an invasion of his right, constituting either a trespass or a nuisance, according to the character of the injury. *Mason* v. *Hill* (1833) 5 B. & Ad. 1; *Townsend* v. *Bell* (1893) 24 N. Y. Supp. 193.

A recent decision in New York illustrates the nature of the remedy